Supreme Court, U.S.
FILED
MAR 30 1998
CLERK

No. 97-1178

(2)

In the Supreme Court of the United States

OCTOBER TERM, 1997

ROCKWELL INTERNATIONAL CORPORATION, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

SETH P. WAXMAN
Solicitor General
Counsel of Record

FRANK W. HUNGER
Assistant Attorney General

DOUGLAS N. LETTER
MARK C. NILES
Attorneys

Department of Justice
Washington, D.C. 20530-0001
(202) 514-2217

20 pp

QUESTIONS PRESENTED

1. Whether the court of appeals erred in holding that the plea agreement between petitioner and the United States contained no promise limiting the United States' ability to intervene in a qui tam action brought pursuant to the False Claims Act, 31 U.S.C. 3729 *et seq.*

2. Whether the court of appeals erred in holding that the parol evidence rule precluded petitioner from offering extrinsic evidence of terms not included in the fully integrated written plea agreement between petitioner and the United States.

TABLE OF CONTENTS

	Page
Opinions below	1
Jurisdiction	1
Statement	1
Argument	9
Conclusion	16

TABLE OF AUTHORITIES

Cases:

Blackledge v. *Allison*, 431 U.S. 63 (1977)	14
Hughes Aircraft Co. v. *United States ex rel. Schumer*, 117 S. Ct. 1871 (1997)	2
Kingsley v. *United States*, 968 F.2d 109 (1st Cir. 1992)	15
Lane v. *Williams*, 455 U.S. 624 (1982)	5
Santobello v. *New York*, 404 U.S. 257 (1971)	5
United States v. *Ajugwo*, 82 F.3d 925 (9th Cir. 1996), cert. denied, 117 S. Ct. 742 (1997)	12, 15
United States v. *Clark*, 55 F.3d 9 (1st Cir. 1995), cert. denied, 117 S. Ct. 272 (1996)	11
United States v. *Fentress*, 792 F.2d 461 (4th Cir. 1986)	15
United States v. *Garcia*, 956 F.2d 41 (4th Cir. 1992)	15
United States v. *Hayes*, 946 F.2d 230 (3d Cir. 1991)	12
United States v. *Martin*, 25 F.3d 211 (4th Cir. 1994)	11
United States v. *Pollard*, 959 F.2d 1011 (D.C. Cir.), cert. denied, 506 U.S. 915 (1992)	11-12
United States v. *Salemo*, 81 F.3d 1453 (9th Cir.), cert. denied, 117 S. Ct. 436 (1996)	11, 12

Cases—Continued: Page

United States v. *Shorteeth*, 887 F.2d 253 (10th Cir. 1989) 12

United States v. *Swinehart*, 614 F.2d 853 (3d Cir.), cert. denied, 449 U.S. 827 (1980) 15

Statutes:

False Claims Act, 31 U.S.C. 3729 *et seq.* 2

31 U.S.C. 3729 2

31 U.S.C. 3730 2

31 U.S.C. 3730(b) 2

31 U.S.C. 3730(b)(4) 2

31 U.S.C. 3730(c) 2

31 U.S.C. 3730(c)(3) 3, 4

18 U.S.C. 3231 5

In the Supreme Court of the United States

OCTOBER TERM, 1997

No. 97-1178

ROCKWELL INTERNATIONAL CORPORATION, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-15a) is reported at 124 F.3d 1194. The opinion of the district court (Pet. App. 16a-26a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on August 26, 1997. A petition for rehearing was denied on October 15, 1997. Pet. App. 27a-28a. The petition for a writ of certiorari was filed on January 13, 1998. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Petitioner operated the United States Department of Energy's Rocky Flats Nuclear Weapons

Plant in Colorado. In 1988, the United States Department of Justice began an investigation into environmental crimes alleged to have been committed at Rocky Flats. In 1989, James Stone filed a qui tam complaint against petitioner in federal district court pursuant to the False Claims Act, 31 U.S.C. 3729 *et seq.*,[1] alleging that petitioner had committed various wrongful acts while operating Rocky Flats. Pursuant to 31 U.S.C. 3730(b), the qui tam complaint was filed under seal and initially served only on the United States. When the complaint was unsealed in November 1990, the United States had not decided whether to intervene in the qui tam action.[2] Pet. App. 2a-3a.

After receiving notice of the qui tam action, petitioner filed a breach of contract claim against the United States in the United States Court of Federal Claims. In addition, the United States and petitioner entered into plea negotiations concerning the criminal investigation being conducted by the United States. After extensive negotiations, petitioner and the United States entered into a plea agreement, in March 1992, providing that petitioner would plead guilty to ten environmental crimes and pay a fine of

---

[1] The False Claims Act allows a private plaintiff to bring a qui tam action, on behalf of himself and the United States, alleging that the defendant presented false or fraudulent claims to the United States. See 31 U.S.C. 3729, 3730. See also *Hughes Aircraft Co.* v. *United States ex rel. Schumer*, 117 S. Ct. 1871, 1874 (1997).

[2] Under the False Claims Act, the United States may intervene in a qui tam action brought by a private plaintiff. If the United States chooses to intervene, the qui tam action is thereafter conducted primarily by the United States. 31 U.S.C. 3730(b)(4) and (c).

$18.5 million. In return, the United States promised not to bring any further environmental criminal charges against petitioner for any acts relating to Rocky Flats that were already known to the United States. The United States also agreed not to take civil or administrative action against petitioner based, again, on anything known to the United States at the time of the settlement, for any violations of specified environmental statutes (not including the False Claims Act). Pet. App. 3a-4a.

The plea agreement provided that it did "not encompass (or preclude) * * * the issues raised in *United States of America, ex rel., and James S. Stone v. Rockwell International Corporation*, Civil Action No. 89-C-1154 (D. Colo.) ("*Stone*"). After an independent review, the Department of Justice-Civil Division has determined to file a notice in Stone declining to intervene." Pet. App. 4a. The agreement also contained an integration clause providing that the written plea agreement "states the parties' entire agreement. There are no other agreements, terms, or conditions, express or implied. In entering this agreement, neither the Department of Justice nor Rockwell have relied, or are relying, on any terms, promises, or conditions not expressly stated herein." *Id.* at 10a.

On the day that the plea agreement was executed, the United States filed a notice in the *Stone* qui tam action indicating that it had decided not to intervene in the action. Pet. App. 5a. The notice stated that the United States reserved its right under 31 U.S.C. 3730(c)(3) to intervene at a later date "upon a showing

of good cause."[3] The United States Department of Justice also informed petitioner by contemporaneous letter that the United States had reserved that statutory right. Gov't C.A. Br. 16-17. Three months later, in June 1992, the district court accepted petitioner's guilty plea and imposed sentence. Pet. App. 5a.

2. In November 1995, in response to information it received in the course of the pending litigation in the Court of Federal Claims, the United States moved to amend its answer to petitioner's breach of contract complaint, to include False Claims Act counterclaims alleging fraud. Pet. App. 5a. Based on the same information, as well as additional evidence from Stone, the relator in the qui tam action, the United States also moved to intervene in the *Stone* qui tam action. *Id.* at 5a, 19a-20a. Petitioner opposed the motion to intervene, but the district court granted the motion, holding that the United States had good cause to intervene, and that the United States' assumption of the prosecution of the qui tam action would not prejudice the relator or petitioner. *Id.* at 5a, 20a-21a.[4]

Petitioner also filed a separate motion in the criminal case, seeking a ruling preventing the United States from intervening in the qui tam action on the ground that such intervention would violate the plea

---

[3] Section 3730(c)(3) provides in pertinent part: "When a person proceeds with [a qui tam] action, the court, without limiting the status and rights of the person initiating the action, may nevertheless permit the Government to intervene at a later date upon a showing of good cause."

[4] Petitioner sought interlocutory review of the district court's ruling permitting the United States to intervene in the qui tam action, but the court of appeals denied interlocutory review. Gov't C.A. Br. 36-37 n.6.

agreement in the criminal case.[5] Pet. App. 5a, 16a. The district court denied petitioner's motion. *Id.* at 24a. The district court first noted that it had, by separate order, granted the United States' motion to intervene in the qui tam action. *Id.* at 20a. The court then addressed the question whether intervention by the United States violated the 1992 plea agreement. *Id.* at 21a-24a. The court noted that the plea

---

[5] The precise nature of petitioner's motion in the criminal case is not clear. That motion was filed over three years after petitioner's guilty plea, and petitioner does not indicate what rule of criminal procedure or statutory provision authorized the filing of such a motion at that time. In his petition for a writ of certiorari, petitioner contends that the district court had jurisdiction over the motion under 18 U.S.C. 3231 (granting district courts exclusive jurisdiction over offenses against laws of United States). See Pet. 9. Petitioner also relies on *Lane* v. *Williams*, 455 U.S. 624, 630 (1982) (state prisoner who claimed that he was not properly advised of applicable sentence could seek federal habeas corpus relief, and, if violation was established, potential remedies included setting aside of conviction or reduction of sentence to conform to defendant's understanding), and *Santobello* v. *New York*, 404 U.S. 257, 262-263 (1971) (where prosecutor breached plea agreement not to make recommendation at sentencing, state prisoner seeking federal habeas relief was entitled either to vacation of conviction or to new sentencing proceeding, before new judge, at which prosecutor did not make sentencing recommendation). See Pet. 9. Neither Section 3231 nor *Lane* nor *Santobello*, however, supports the idea that a defendant who has pleaded guilty in a criminal case may years later file a motion in the criminal case seeking specific performance of a provision in a plea agreement that does not relate to the validity of the defendant's conviction or sentence. Nor was there any compelling need for petitioner in the present case to seek relief in the criminal proceeding, because petitioner could have asserted his claim of a breach of the plea agreement in the qui tam action.

agreement expressly provided that it did not encompass the qui tam action, and indicated only that the United States had determined to file a notice that it would not intervene in the qui tam action. *Id.* at 21a. The United States did file such a notice, and, the district court explained, nothing in the plea agreement precluded the United States from seeking to intervene at a later date. *Ibid.* The court also rejected petitioner's argument that the United States' intervention violated the plea agreement because the decision to intervene was not based on new evidence. *Id.* at 21a-24a.

Finally, the court distinguished the present case from cases cited by petitioner requiring that criminal plea agreements be interpreted according to the reasonable understanding of the defendant. Pet. App. 24a. The court noted that the cited cases involved concerns about "imperfect understanding of the legal issues" by a defendant, or a difference in understanding between the defendant and his attorney. *Ibid.* The court held that there was no such concern in the present case, "where the defendant is a corporation [and] cannot credibly argue that it did not understand [that] the government's consideration for its guilty pleas" did not extend to a promise not to later intervene in the qui tam action. *Ibid.*

3. Petitioner appealed, arguing that the district court improperly interpreted the plea agreement, and erred by not convening a hearing to consider evidence supporting petitioner's interpretation of the agreement. Pet. App. 6a. The Tenth Circuit affirmed. *Id.* at 15a. In reaching its decision, the court of appeals reviewed de novo the district court's determination that the United States' actions did not violate the plea agreement, reviewed for clear error the district

court's interpretation of the plea agreement, and reviewed for abuse of discretion the district court's decision not to convene an evidentiary hearing. *Id.* at 8a. The court of appeals also noted that it would interpret the plea agreement according to "the defendant's reasonable understanding at the time the guilty plea was entered." *Id.* at 9a.

The court of appeals held that the plea agreement could not reasonably be interpreted as limiting the United States' ability to seek to intervene in the qui tam action at a later time. Pet. App. 11a-13a. In particular, nothing in the agreement supported petitioner's claim that the government had promised not to seek intervention in the qui tam action at a later date unless it discovered new evidence. *Id.* at 11a. To the contrary, the most that could be said is that the plea agreement reflected the United States' decision not to intervene at that time, that petitioner correctly concluded that the False Claims Act would therefore foreclose the United States from intervening unless it could establish good cause, and that petitioner had the view that, under the False Claims Act, good cause could be shown only if new evidence was discovered. *Id.* at 7a-8a, 13a. Petitioner's belief about the proper interpretation of the "good cause" requirement of the False Claims Act, however, "exists apart from the plea agreement, * * * is based on the statute, and is an issue to be resolved in the" qui tam action. *Id.* at 13a. The court of appeals therefore held that the "district court was correct to conclude that the government's efforts to intervene in the [qui tam action] were not breaches of the plea agreement. * * * [A]ny understanding to the contrary is simply unreasonable." *Ibid.*

Because the written plea agreement could not reasonably have been understood to limit the United States' ability to seek to intervene in the qui tam action at a later date, the extrinsic evidence offered by petitioner necessarily was offered for the purpose of establishing that the plea agreement contained an additional, unwritten term. Pet. App. 11a. The court of appeals held, however, that the parol evidence rule precludes consideration of extrinsic evidence to establish that a fully integrated written agreement contains additional unwritten terms. *Id.* at 9a. The plea agreement in the present case was fully integrated,[6] and the court therefore held that the parol evidence rule foreclosed petitioner's effort to use extrinsic evidence "to prove its reasonable understanding that the plea agreement contained an additional term." *Id.* at 11a. The court of appeals further explained that the cases upon which petitioner relied to support a relaxation of the parol evidence rule were distinguishable, because they involved the use of extrinsic proof to shed light on the meaning of a term in the written agreement or to show an obvious mistake or bad faith. *Id.* at 12a.

Finally, the court of appeals rejected petitioner's contention that the district court's refusal to grant an evidentiary hearing was based on its conclusion that petitioner, as a corporation, was not entitled to the same due process protections as individual

---

[6] As noted above, the plea agreement provided: "This document states the parties' entire agreement. There are no other agreements, terms, or conditions, express or implied. In entering this agreement, neither the Department of Justice nor Rockwell have relied, or are relying, on any terms, promises, or conditions not expressly stated herein." Pet. App. 10a.

defendants. Rather, the court of appeals concluded, the district court had simply held that petitioner "had the same understanding of the plea agreement that its counsel had. [Petitioner] does not claim that its attorneys misled it in explaining the plea agreement's consequences. [Petitioner's] attorneys simply could not have understood the plea agreement to include a term not within the completely integrated written instrument, and the district court merely held the corporation to that same understanding." Pet. App. 14a-15a.

ARGUMENT

The decision of the court of appeals is correct, and further review by this Court is unwarranted.

1. The court of appeals correctly held that the fully integrated, written plea agreement in the present case could not reasonably be understood as limiting the ability of the United States to seek to intervene in the qui tam action at a later date. Although the plea agreement did provide that the United States would not pursue various other avenues of relief against petitioner, it also provided that that agreement did not extend to the qui tam action. With respect to the qui tam action, the agreement merely recited that the United States had determined to file a notice indicating that it did not seek to intervene in the qui tam action. The United States did file such a notice, but when it did so it expressly reserved its statutory right under the False Claims Act to later seek to intervene if good cause were shown. The plea agreement was accepted by the district court three months later (see p. 4, *supra*) with no intervening objection by petitioner to the United States' reservation of its right to intervene in

Stone if it satisfied the statutory standard governing such an intervention.

Against this backdrop, petitioner does not contend, and could not reasonably contend, that the plea agreement foreclosed any subsequent motion to intervene. Rather, it contends that the plea agreement should be interpreted as requiring that any such intervention be supported by what *petitioner* understands to be good cause for purposes of the False Claims Act. The court of appeals and the district court correctly rejected that argument. The plea agreement does not mention the phrase "good cause," and certainly does not suggest that the parties had agreed on petitioner's particular definition of that phrase as it is used in the False Claims Act.

To the contrary, the plea agreement simply indicated that the United States was not going to intervene at the time of the plea agreement. It followed from that part of the agreement that, if the United States sought to intervene at a later time, it would be able to do so only if it could persuade the district court in the qui tam action that there was good cause for belated intervention. But it did not follow that it would be a breach of the agreement for the United States to file such a motion to intervene. Even less did it follow that the question of the United States' right to intervene would turn on the interpretation of the plea agreement, rather than on the interpretation of the pertinent provision of the False Claims Act. As the court of appeals concluded, the question whether there was good cause for the United States to intervene in the qui tam action "exists apart from the plea agreement, * * * is based on the statute, and is an issue to be resolved in the" qui tam action. Pet. App. 13a.

2. Petitioner argues (Pet. 9-15) that the courts of appeals have reached conflicting conclusions as to the proper standard of appellate review applicable to questions of the interpretation of plea agreements. Specifically, petitioner contends that the Tenth Circuit, *inter alia*, applies a "clear error" standard, while a number of other circuits apply a de novo standard. Pet. 9-11 (citing cases). Even assuming that the courts of appeals have reached inconsistent conclusions as to the proper standard of review,[7] the

---

[7] Although there does appear to be confusion among the courts of appeals as to the proper standard of appellate review in cases involving claims that a plea agreement has been breached, there does not appear to be a clearly developed circuit conflict of the kind petitioner alleges. Many of the courts of appeals, including the Tenth Circuit, recognize that claims that a plea agreement was breached will typically present both factual and legal issues, as to which different standards of appellate review will apply. See Pet. App. 8a (court will "review de novo whether the government's conduct violates the plea agreement, but the district court's interpretation of the agreement is reviewed for clear error"). See also, *e.g.*, *United States* v. *Salemo*, 81 F.3d 1453, 1460 (9th Cir.) (court will review district court's interpretation of plea agreement de novo, and determination whether agreement was breached for clear error), cert. denied, 117 S. Ct. 436 (1996); *United States* v. *Clark*, 55 F.3d 9, 11 (1st Cir. 1995) (factual questions of what terms of agreement are and what government's conduct was are reviewed for clear error, while legal question whether government's conduct violated plea agreement is reviewed de novo), cert. denied, 117 S. Ct. 272 (1996); *United States* v. *Martin*, 25 F.3d 211, 217 (4th Cir. 1994) (conclusions as to "what the parties said or did are reviewed under the 'clearly erroneous' standard while principles of contract interpretation applied to the facts are reviewed de novo"); *United States* v. *Pollard*, 959 F.2d 1011, 1022-1024 (D.C. Cir.) (facial meaning of agreement is question of law to be reviewed de novo, but whether agreement was breached in some contexts may be

present case is not a suitable vehicle for addressing the issue, because petitioner would not be entitled to relief even under the approach he advocates.

Application of a de novo standard of review to the district court's interpretation of the plea agreement in the present case would not have altered the con-

---

question of fact), cert. denied, 506 U.S. 915 (1992); *United States* v. *Hayes*, 946 F.2d 230, 233 (3d Cir. 1991) (question of what terms of agreement are is reviewed for clear error, while question whether government's conduct violated plea agreement is reviewed de novo).

No clear and consistent approach emerges from the case law as to which aspects of the inquiry are predominantly factual, and therefore reviewable for clear error, and which are predominantly legal, and therefore reviewable de novo. It is not accurate, however, to say that there is a well defined circuit split. To the contrary, as petitioner rightly concedes (Pet. 9-10 & nn. 3-6), the case law within the various courts of appeals is also unsettled. Compare Pet. App. 8a (applying clear-error standard to interpretation of plea agreement), with *United States* v. *Shorteeth*, 887 F.2d 253, 256 (10th Cir. 1989) (conducting de novo review of meaning of plea agreement); compare also, *e.g.*, *United States* v. *Ajugwo*, 82 F.3d 925, 928-929 (9th Cir. 1996) (reviewing interpretation of plea agreement for clear error), cert. denied, 117 S. Ct. 742 (1997), with *Salemo*, 81 F.3d at 1460 (conducting de novo review of interpretation of plea agreement).

For the reasons stated in text, this case is not an appropriate one in which to address the question of the applicable standard of review to apply to issues of plea-agreement interpretation. It should be noted, however, that there is a substantial inconsistency in petitioner's contentions: if petitioner is correct that the interpretation of an integrated plea agreement is a question of law to be reviewed de novo (Pet. 13), it would be difficult to understand how petitioner could be right that the district court erred by not conducting an evidentiary hearing to determine the proper meaning of the integrated plea agreement in this case (Pet. 15-26).

clusion of the court of appeals. To the contrary, the opinion below demonstrates that the court of appeals completely agreed with the district court's interpretation of the plea agreement. After stating that the district court's interpretation of the agreement was not clearly erroneous, Pet. App. 11a, the court of appeals went on to hold that the district court had interpreted the plea agreement correctly:

> The plea agreement in this case contains no promise by the government limiting its ability to intervene in the [qui tam action] to a showing of good cause. * * *
>
> What Rockwell really seeks is to add a term to the agreement. * * *
>
> * * * The district court was correct to conclude that the government's efforts to intervene in the [qui tam action] were not breaches of the plea agreement. In light of the agreement's complete integration into the writing, any understanding to the contrary is simply unreasonable.

Id. at 11a, 13a.

Given the court of appeals' holding that petitioner's interpretation of the plea agreement was "simply unreasonable," the court of appeals would unquestionably have affirmed the judgment of the district court even if it had applied a de novo standard of review. Because petitioner could not obtain relief even if he were to prevail on the claim that a de novo standard of review should have been applied, further review of that claim is not warranted. For the same reason, the present case is not a suitable vehicle for addressing any disagreement that may exist as to the proper

standard of review to be applied to questions of plea-agreement interpretation.

3. Petitioner also argues (Pet. 16-17) that the court of appeals erred by not relying on parol evidence —in the form of testimony concerning petitioner's "reasonable understanding" of the plea agreement— in interpreting the agreement. That contention is without merit and in any event does not warrant further review.

In rejecting petitioner's attempt to offer extrinsic evidence as to its understanding of the plea agreement, the court of appeals held that the plea agreement's integration clause "severely limited" the significance of evidence of petitioner's "reasonable understanding at the time the guilty plea was entered." Pet. App. 9a. The court noted that, although the integration clause foreclosed an effort to prove that the written agreement contained additional terms, the clause did "not in itself prohibit the court from looking beyond the document to see if other agreements exist between the parties." *Id.* at 10a (citing *Blackledge* v. *Allison*, 431 U.S. 63, 75 n.6 (1977)). There was no need for such an external search in this case, the court held, because petitioner acknowledged that the plea agreement was fully integrated, and did not assert that there were other agreements between the parties. *Ibid.*

Nonetheless, petitioner sought to demonstrate through extrinsic evidence that the United States had agreed to something that was not contained in the plea agreement. The court of appeals observed that petitioner was effectively seeking to "add a term to the agreement" and that the parol evidence rule precluded admission of extrinsic evidence for that purpose. Pet. App. 11a-12a. That ruling was correct.

See, *e.g.*, *United States* v. *Ajugwo*, 82 F.3d 925, 928-929 (9th Cir. 1996), cert. denied, 117 S. Ct. 742 (1997); *United States* v. *Fentress*, 792 F.2d 461, 464 (4th Cir. 1986). In any event, the question of the proper interpretation of the particular plea agreement in the present case does not warrant further review.

Nor is there any merit to petitioner's claim (Pet. 18-19) that the ruling of the court of appeals conflicts with decisions applying a "relaxed" parol evidence rule to plea agreements. As the court of appeals explained, Pet. App. 12a, the three cases upon which petitioner relies are easily distinguishable. The first of the cases involved the very different question whether extrinsic evidence may be considered to shed light on the meaning of the terms in an integrated agreement. See *United States* v. *Swinehart*, 614 F.2d 853, 858 (3d Cir.), cert. denied, 449 U.S. 827 (1980). The court of appeals did not address that question in the present case, because it held instead that petitioner was relying on extrinsic proof not to interpret the terms of the integrated agreement but rather to add terms to that agreement.

The second case petitioner relies upon, *Kingsley* v. *United States*, 968 F.2d 109 (1st Cir. 1992), involved a plea agreement that was made orally and reduced to writing in part, and that did not contain an integration clause. *Id.* at 114-115 (treating oral representation as included in plea agreement even though not recorded in written letter agreement reflecting part of plea agreement).

Finally, in the third case on which petitioner relies, *United States* v. *Garcia*, 956 F.2d 41, 42-44 (4th Cir. 1992), the court concluded that the government had made an additional promise that was not contained in an integrated plea agreement, but it did so on

unusual facts not present here: there was no dispute that an additional promise had been made and was not intended to be extinguished by the integration clause; the additional promise was reflected in a cover letter attached to the plea agreement; the cover letter suggested inaccurately that the additional promise was in fact reflected in the plea agreement; the cover letter and the plea agreement had both been drafted by the government; and the defendant spoke almost no English. *Garcia* does not support petitioner's contention that extrinsic evidence could be used to add a term to an integrated agreement in the circumstances of the present case.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

SETH P. WAXMAN
Solicitor General

FRANK W. HUNGER
Assistant Attorney General

DOUGLAS N. LETTER
MARK C. NILES
Attorneys

MARCH 1998